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SUBJECT: NEPAL: OHCHR AND UNHCR SEE GRAVE PROBLEMS BENEATH THE SURFACE

Classified By: Ambassador Nancy J. Powell. Reasons 1.4 (b/d)

Summary

¶1. (C) On May 25, the Representative of the High Commissioner for Human Rights in Nepal told South and Central Asia Deputy Assistant Secretary Feigenbaum that Nepal's recent election and its human rights stance in international circles had created a misleading picture of the country's human rights record. In practice, the rule of law faced huge challenges. Bennett highlighted in particular the problems of impunity and discrimination. His colleague, who heads the Nepal Office of the UN High Commissioner for Refugees Office (UNHCR), stated that Government officials were currently committed to third-country resettlement for Bhutanese refugees. Dell underlined, however, that UNHCR was greatly concerned about how a new Maoist-led government would handle the issue. She and Bennett also noted the difficulties that Tibetan refugees were facing, especially from the Chinese.

CA Election Creates More Inclusive Parliament

¶2. (C) Richard Bennett, who is the Representative of the United Nations High Commissioner for Human Rights in Nepal (OHCHR), reported to visiting Deputy Assistant Secretary of State for South and Central Asia Evan Feigenbaum and the Ambassador on May 25 that the April 10 Constituent Assembly election had created a much more inclusive parliament. According to a recent report by the UN Mission in Nepal, Nepal will now rank 14th in the world in terms of representation of women in its legislature. Many more Madhesis, indigenous nationalities and Dalits than before had won places in the new Assembly. Most of them, as DAS Feigenbaum pointed out, were Maoists. Beyond picking better candidates, the Maoists, Bennett added, had run a more effective campaign and done their homework.

No Redress For Human Rights Abuses

¶3. (C) The OHCHR Representative said his goal now was to see a new Nepali constitution that was strong on human rights and drafted with broad public participation. Another high

priority was to deal with the issue of impunity, which had "blighted" the country and contributed to the Maoist conflict. In practice, he explained, there was no judicial redress for those who had been victimized, nor were there any administrative or other consequences for violations of the law. Bennett pointed out that no one had been prosecuted for human rights abuses during the insurgency or since. In Sri Lanka, nearly all prosecutions had led to acquittals, but in Nepal, prosecutions never started. The Ambassador mentioned that parties typically intervened to get cases dropped when the police were still investigating. Bennett, who was previously the OHCHR Representative in Afghanistan, said Nepal's rule of law compared favorably with that country on the surface. But underneath it was not so different. It had institutions -- police, courts, etc. -- that were supposed to deliver justice, but they did not do so.

No Easy Solutions

¶4. (C) The OHCHR chief remarked that finding solutions would require a comprehensive approach which looked at the laws, the local government structures and the security sector. Chief District Officers were key. The bureaucracy, which was dominated by upper caste "pahadis" (hill-origin people), was only very slowly making room for traditionally excluded groups. The Maoists were not yet willing to renounce violence and were attempting instead to expand their Young Communist League (YCL). He was unsure if the Maoist leadership had command and control over the YCL, but ventured

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most signs indicated they did, especially in major cities. Bennett suggested that more pressure needed to be put on them to end violence and intimidation as means to achieve their goals. DAS Feigenbaum replied that the U.S. had and would continue to make clear to the Maoists directly that the degree to which we could work with them would depend on their willingness to continue embracing the political process and abandon violence. State security forces, the OHCHR head stated, were another problem. They had a tendency to use excessive force -- because of a lack of capacity or political will. In the recent past, OHCHR had recorded more killings by the state than by the Maoists.

Maoists and Other Parties' HR Commitment Questioned

¶5. (C) Nepali human rights groups were worried about how committed a Maoist-led government would be to freedom of expression and freedom of the press. The Ambassador agreed that freedom of the press would merit particular attention. The OHCHR head said that Prachanda had spelled out the Maoists' commitment in detail, including their views on a Truth and Reconciliation Commission. DAS Feigenbaum noted the issue of rhetoric versus reality. Bennett made the point that the same thing could be said of all the parties. Nepal had signed up to most of the international human rights conventions and had met their international reporting responsibilities well. The Nepali Government did not criticize human rights law or raise cultural and religious issues as a bar, but the reality domestically was very different. Bennett suggested that the best approach might be to establish a Disappearances Commission and then build on that to create an effective and broader Truth and Reconciliation Commission that precluded amnesty for perpetrators. All the players, including the Nepal Army, were still in denial.

Publicly Positive, Privately Nervous About Bhutanese

¶6. (C) UNHCR Representative Dell admitted that UNHCR was positive about a Maoist-led government in public, but privately nervous. She said that opponents of Bhutanese resettlement had been emboldened by the Maoist victory on

April 10. All indications were that the Maoists were assisting the anti-resettlement Bhutanese Communist Party; YCL were speaking openly in the camps against resettlement. Government officials, in contrast, had become completely persuaded that resettlement was the way forward. On a recent visit to a camp, the head of refugee affairs at the Home Ministry had scolded refugees for not applying for resettlement. Dell expressed concern the Maoists would give the civil servants different instructions when they took over the Home Ministry, but then again, they might not. The Maoists were saying they would talk to the Indians to put pressure on the Bhutanese to agree to repatriations. She did not expect that policy to work any more than it had worked over the past near to two decades, but it was essentially harmless.

Chinese Pressure on Tibetans

¶7. (C) Dell mentioned that UNHCR had reliable reports that Chinese police were operating on the Nepali side of the border with Tibet to prevent Tibetans from fleeing into Nepal. UNHCR had not yet received permission to travel to the border to see for itself. She made the point that this was typically one of the busiest times of the year at the Tibetan Refugee Reception Center in Kathmandu, but there was only one Tibetan there. Dell said a senior Maoist leader had told her that a Maoist-led government would not tolerate protests against China on Nepal's soil. The question, however, was whether they would continue to abide by the so-called gentleman's agreement that allowed Tibetans to

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transit Nepal to India. Bennett said OHCHR's relationship with the Chinese Ambassador in Nepal had become quite strained over OHCHR's defense of the Tibetans' right to peaceful protest in Nepal.

Comment

¶8. (C) A new Maoist-led government will inherit many unresolved issues, among which the most important are issues of human rights, particularly impunity and discrimination. How that government handles these issues and the important question of refugees will affect the U.S. relationship.

¶9. (U) SCA DAS Feigenbaum has cleared this message.
POWELL